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Case No.

SUPREME COURT OF THE UNITED STATES

October Term 1984

In re:

Layne A. Lindberg and
Barbara Jean Lindberg,

Debtors

Phillip D. Armstrong, Trustee of the Estates of Layne A. Lindberg and Barbara Jean Lindberg,

Petitioner

vs.

Layne A. Lindberg and Barbara Jean Lindberg,

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Where a chapter 13 bankruptcy case is converted to a chapter 7 case, is the right to a homestead exemption tested by the situation existing when the petition in bankruptcy is filed or by the situation existing at the time of conversion?

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OFFICIAL & UNOFFICIAL REPORTS

The opinion of the United States Court of Appeals for the Eighth Circuit is reported in 735 F.2d 1087 (8th Cir. 1984).

The opinion of the United States District Court, District of North Dakota it not reported. It is Civil No. A1-82-147.

The opinion of the United States Bankruptcy Court is not reported. It is Bankruptcy Case No. 80-05270.

JURISDICTIONAL STATEMENT

On June 6, 1984, the United States Court of Appeals for the Eighth Circuit filed its opinion affirming the judgment of the United States District Court for the District of North Dakota.

The court denied the petitioner's motion for a rehearing in an order entered July 12, 1984.

The United States Supreme Court's jurisdiction is invoked under 28 U.S.C.A. Section 1254(1).

CODE PROVISIONS & STATUTES INVOLVED

11 U.S.C.A. Section 103(a).

(a) Except as provided in section 1161 of this title, chapter 1, 3, and 5 of this title apply in a case under chapter 7, 11, or 13 of this title.

11 U.S.C.A. Section 103(h).

(h) Chapter 13 of this title applies only in a case under such chapter.

11 U.S.C.A. Section 301.

A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.

11 U.S.C.A. Section 348(a).

Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

11 U.S.C.A. Section 522(b)(2)(A).

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate either -

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and . . .

11 U.S.C.A. Section 541(a).

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is -

(A) under the sole, equal, or

joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) An interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date -

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtors' spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents and profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

11 U.S.C.A. Section 1306(a).

(a) Property of the estate includes, in addition to the property specified in section 541 of this title-

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title, whichever occurs first.

North Dakota Century Code §28-22-02(7).

The property mentioned in this section is absolutely exempt from all process, levy, or sale:

* * *

7. The homestead as created, defined, and limited by law.

North Dakota Century Code §28-22-17.

In accordance with the provisions of section 522(b) of the Bankruptcy Reform Act of 1978 [Pub. L. 95-598; 92 Stat. 2586; 11 U.S.C. 522(b)], residents of this state shall not be entitled to the federal exemptions provided in section 522(d) of the Bankruptcy Reform Act of 1978. The residents of this state shall be limited to claiming those exemptions allowable by North Dakota law.

North Dakota Century Code §47-18-01.

The homestead of every head of the family residing in this state shall consist of the land upon which the claimant resides, and the dwelling house situated thereon in which the homestead claimant resides, with all its appurtenances, and all other improvements on said land, the total not to exceed sixty thousand dollars in value, over and above liens or encumbrances or both. Such homestead shall be exempt from judgment lien and from

execution or forced sale, except as otherwise provided in this chapter. In no case shall the homestead embrace different lots or tracts of land unless they are contiguous.

North Dakota Century Code §47-18-02(1).

The phrase "head of a family" as used in this chapter shall mean:

1. The husband or wife when the claimant is a married person, but in no case are both husband and wife entitled each to a homestead.

STATEMENT OF THE CASE

The debtors filed their voluntary petition under chapter 13 on July 3, 1980. With their consent the case was converted to chapter 7 on March 2, 1982, upon the motion of a creditor.

At the time the petition was filed the debtors resided in their house in New Town, North Dakota. They also owned at the time a 640 acre farm some distance away in another county, Burke County, North Dakota. The debtors scheduled both properties on the chapter 13 petition and designated their house and lot in New Town as their homestead exemption.

Following the filing of the petition and prior to the time of conversion the debtors moved from their New Town house to the Burke County farm. On March 15, 1982, the debtors filed amended schedules in which they claimed a home-

stead exemption in the Burke County property.

The trustee timely objected to the homestead exemption claimed on the amended schedules. The U.S. Bankruptcy Court ruled against the trustee. The U.S. District Court ruled for the trustee and then reversed itself on rehearing. The United States Court of Appeals for the Eighth Circuit affirmed the U.S. District Court's decision. The Court of Appeals denied the trustee's motion for rehearing.

The basis for federal jurisdiction in the U.S. Bankruptcy Court was 28 United States Code, Section 1471.

ARGUMENT

The question presented is important in the administration of bankruptcy estates under the 1978 revisions of the bankruptcy laws, title 11, United States Code. The essence of the question is whether the right to an exemption is fixed at the time a chapter 13 petition is filed or at the time that the case is converted to chapter 7.

The Eight Circuit Court of Appeals has decided the issue in a way in conflict with a decision of this Court which was rendered under the Bankruptcy Act. The decision of the circuit court is contrary to the provisions of the 1978 bankruptcy code. This Court has not ruled on the issue in the context of a conversion of cases under the bankruptcy code. For the reasons set out this Court should review the matter on

writ of certiorari.

In the case of In re Lindberg, 735 F.2d 1087 (8th Cir. 1984), the circuit court decided that exemptions may be claimed as of the time the case is converted from chapter 13 to chapter 7.

This Court in 1924 set out the general rule under the former bankruptcy laws that the situation existing when the petition is filed governs the right to exemptions. White v. Stump, 226 U.S. 310 (1924). The Court stated there that the bankruptcy laws disclosed a purpose "to fix the line of cleavage" with special regard to the conditions existing when the petition is filed. Ibid. at 313. The current bankruptcy laws similarly establish a line of cleavage at the time of the filing of the petition.

By force of 11 U.S.C.A. Sections

103(a), 103(h), 348(a), 522(b), 541(a), and 1306 Congress has embodied the traditional rule of White v. Stump into the bankruptcy code.

Section 541(a) in conjunction with section 301 provides that the filing of a petition creates an estate comprised of all the legal or equitable interests of the debtor in property as of the commencement of the case. Section 1306 continues the provisions of section 541 in chapter 13 cases.

The legislative history under section 1306 states that section 541 is expressly made applicable in chapter 13 cases by section 103(a). S.Rep.No. 95-989, 95th Cong., 2d Sess., 140-141 (1978). Section 103(a) provides that the general provisions of chapters 1, 3, and 5 of title 11 apply to all the operative chapters, 7, 9, 11, and 13. H.R.

Rep.No. 95-595, 95th Cong., 1st Sess., 316 (1977).

Section 103(h) states that chapter 13 provisions apply only in a case under that chapter. Similarly the conversion of a case from chapter 13 to chapter 7 constitutes an order for relief under chapter 7. 11 U.S.C.A. Section 348(a). Moreover, the conversion does not effect a change in the date of the filing of the petition. Ibid.

Bankruptcy code section 522 is also expressly made applicable in chapter 13 cases by section 103(a). See S.Rep.No. 95-989, 95th Cong., 2d Sess., 140-141 (1978); In re Blake, 38 B.R. 604, 606-07 (Bankr. E.D. N.Y. 1984); In re Tevaga, 35 B.R. 157 (Bankr. Hawaii 1983); In re Hannan, 24 B.R. 691 (Bankr. E.D. N.Y. 1982). For states that have opted out of the federal scheme of exemptions,

section 522(b) provides that exemptions may be selected under state law that is applicable on the date of the filing of the petition.

North Dakota has opted out. N.D.C.C. Section 28-22-17. Debtors in North Dakota must reside on the land which they seek to claim exempt as a homestead. N.D.C.C. Sections 28-22-02(7), 47-18-01. When the Lindbergs filed their petition they did not reside on the 640 acre farm in Burke County. They lived in New Town, Mountrail County, in a house and lot. As of the time they filed their petition the Lindbergs were not entitled under state law to claim the 640 acre farm exempt as a homestead.

The rationale of the circuit court is erroneous. The court stated that there was no estate from which property could be exempted. In re Lindberg, supra

at 1089. However, sections 1306(a), 541(a), 301, and 103(a) together expressly provide that an estate is created at the time the chapter 13 petition is filed. Moreover, the circuit court's reliance on chapter 13 provisions is misplaced because the conversion of the case relates back to the time of the filing of the petition and because chapter 13 provisions apply only to a case under that chapter. 11 U.S.C.A. Sections 348(a), 103(h). Finally, the circuit court in its assessment of the equities overlooked the facts that the debtors have been granted a discharge in chapter 7 and that there are no funds available for distribution to the creditors under the ruling upholding the debtors' homestead exemption.

The ruling of the circuit court is in conflict with the statement made by

another circuit court. In Mansell v. Carroll, 379 F.2d 682, 684 (10th Cir. 1967) the court said, "In a bankruptcy proceeding the determination of what property is exempt is made as of the date of filing and there can be only one homestead insofar as the bankrupt is concerned."

The district court in its first ruling upholding the trustee's objection to the exemption claim set out several policy considerations. First, under a rule allowing the change of exemption the debtor would have an incentive to plan ahead to convert a proceeding just to qualify for a larger homestead exemption. Second, it is important to have a fixed time at which the assets of the estate are determined so that creditors may rely on those assets in making future plans. Third, the debtor is aware that the filing of the petition

will affect his assets and he takes the risk that if he is not able to continue under chapter 13, he will be forced to liquidate under chapter 7.

Through March 31, 1984, there have been 404,124 chapter 13 petitions filed under the bankruptcy code. Based upon past filings another 90,000 chapter 13 petitions can be expected to be filed through March 1985. Each of the petitions potentially raises the policy considerations voiced by the district court.

This Court should decide the question presented herein in order to give guidance to the many debtors and to the countless creditors affected by the bankruptcy laws.

APPENDIX

The following is the decision of the United States Court of Appeals of the Eighth Circuit as reported in 735 F.2d 1087.

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The issue presented in this appeal is whether debtors whose bankruptcy cases are converted from chapter 13 to chapter 7 may claim a different homestead exemption at the time of conversion than the one they originally designated at the commencement of their chapter 13 proceeding.

On July 3, 1980, Layne and Barbara Jean Lindberg filed a joint petition for relief under chapter 13. At that time the Lindbergs owned a home in New Town, North Dakota, where they resided, and a farm in Burke County, North Dakota.

When they filed their chapter 13 petition, the Lindbergs were required to submit a "chapter 13 statement" listing their assets and liabilities, and designating what exemptions they would claim if their assets had to be liquidated. The Lindbergs listed both their home and farm as assets, and designated a homestead exemption in their home.

Thereafter, the bankruptcy court[1] confirmed a plan requiring the Lindbergs to pay their creditors $1,000 a month. The Lindbergs failed to make their monthly payments, and Westlie Motor Company, a creditor from whom the Lindbergs had purchased two automobiles, which had been returned to Westlie, moved to convert their case to a chapter 7 liquidation. The Lindbergs agreed,

1. The Honorable Harold O. Bullis, United States Bankruptcy Judge for the District of North Dakota.

and on March 2, 1982 the court ordered the case converted.

After they filed their chapter 13 petition but before the date of conversion, the Lindbergs left their New Town home and began residing at the Burke County farm. On March 15, 1982, they filed an amended schedule changing their homestead exemption from the $20,000 equity they had in their New Town house to the $80,000 equity they had in the farm.[2] The chapter 7 trustee and Westlie Motor Company objected, arguing that the Lindbergs were bound by their original homestead designation. The bankruptcy court denied the objection and allowed the change, reasoning that since chapter 13 debtors are not allowed exemptions,

2. North Dakota law permits debtors to claim a homestead exemption not to exceed $80,000 in the land and dwelling house where they reside. N.D.Cent.Code § 47-18-01 (Supp.1981).

the Lindbergs were free to claim what exemptions they desired at the time of conversion.

The trustee appealed to the district court,[3] arguing that when a chapter 13 case is converted to a chapter 7 case, the date of filing the chapter 13 petition determines what exemptions may be claimed. The trustee further argued that since the Lindbergs resided at their New Town home when they filed their chapter 13 petition, only that home could be claimed as a homestead. The district court first agreed with the trustee and reversed the bankruptcy court. Rehearing was granted, however, and the district court found that the bankruptcy judge did not abuse his discretion in granting an amendment to the Lindbergs' schedule un-

3. The Honorable Bruce Van Sickle, United States District Judge for the District of North Dakota.

der Bankruptcy Rule 110, which allows amendments to schedules as a matter of course.[4] This appeal followed.

The question of whether the date of filing the chapter 13 petition or the date of conversion to chapter 7 determines what exemptions may be claimed has not been answered by any of the circuit or district courts. The Bankruptcy Court for the District of Oregon has addressed this question and concluded that the date of conversion controls. In re Stinson, 27 B.R. 18 (Bkrtcy.D.Or.1982). We agree with this conclusion.

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The trustee argues that pursuant to

4. Bankruptcy Rule 110 provides:
A voluntary petition, schedule, or statement of affairs may be amended as a matter of course at any time before the case is closed.

11 U.S.C. § 348(a)[5] the date the chapter 13 petition was filed determines what exemptions are available in a converted case. He argues that Bankruptcy Rule 110 cannot be interpreted to permit what § 348(a) prohibits: the use of another date to determine what exemptions are available.

When § 348(a) is examined in conjunction with the code section on exemptions, § 522, these sections do appear to suggest that the date of the chapter 13 petition controls. Section 522(b)(2)(A) states that individual debtors may exempt from property of the estate any

5. The relevant language in § 348(a) is as follows:

> Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but . . . does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

property that is exempt under federal, state or local law applicable on the date of filing the petition. And § 348(a) states that when a case is converted from one chapter to another, the conversion does not effect a change in the date of the filing of the petition.

These two sections, however, do not give the complete answer to our problem because other code sections and bankruptcy rules create a tension, if not a conflict, with them. When we consider the other sections and rules that have some bearing on our problem, we must conclude that § 348(a) and § 522(b)(2)(A) do not prohibit the Lindbergs from claiming a homestead exemption in their farm.

We look first at the purpose behind the debtor's designation of exemptions in the chapter 13 statement. As the bankruptcy court in the instant case correctly observed, debtors list ex-

emptions for a limited purpose in chapter 13 proceedings. Exemptions are listed in the chapter 13 statement only to permit creditors to determine whether the chapter 13 plan should be accepted, and for the court to determine in confirming the plan that the creditors would receive more under the plan than they would in a chapter 7 liquidation. See 11 U.S.C. § 1325(a)(4).[6] In contrast to a chapter 7 liquidation, in a

6. The Lindbergs were required to file their chapter 13 statement pursuant to Interim Bankruptcy Rule 13001. The note to Rule 13001 explains:

> Section 1325(a)(4) of the Code authorizes confirmation of a chapter 13 plan only if the distributions under the chapter 13 plan are equal to or greater than the distribution under chapter 7. Therefore, the court must know what exemption law the debtor would select and the property he would claim as exempt if there were a chapter 7 liquidation. Completion of the Schedule B-4 of the Form No. 6 is a convenient way of providing the court with this necessary information . . . .
>
> The Bankruptcy Rules effective August 1, 1983 are consistent with this explanation, specifically the note to Form 10 of the Rules.

chapter 13 case the debtor remains in possession of his property. 11 U.S.C. § 1327(b) and (c) make clear that when there is confirmation, as in this case, of a chapter 13 plan, the confirmation of the plan vests all of the property of the estate in the debtor free and clear of any claim or interest of any creditor provided for by the plan unless the plan otherwise provides. In the case before us there was no such provision and, accordingly, there was no estate from which property could be exempted. See In re Berry, 30 B.R. 36, 38 (Bkrtcy.E.D. Mich.1983): In re Stinson, 27 B.R. at 20; cf. 5 Collier on Bankruptcy, (15th Ed.), § 1300.81 at 1300-158-59.

In a chapter 7 liquidation, a debtor may exempt from the property of the estate homesteads such as those in issue in this case. 11 U.S.C. § 522(b). For

this purpose the debtor files a list he claims exempt and, unless there is objection,[7] the property claimed is exempt. 11 U.S.C. § 522(1). A chapter 7 trustee has the duty of collecting and reducing to money the property of the estate for which he serves. 11 U.S.C. § 704(1). Disposition of the property of the estate is the subject of specific statutory treatment. 11 U.S.C. §§ 725 and 726.

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Exemption from the estate in a chapter 7 liquidation thus removes the exempted property from the estate which is to be liquidated by the trustee.

7. Bankruptcy Rule 4003 establishes a procedure for the filing of objections and the determination of issues presented by the objections. This area was formerly covered by the earlier Bankruptcy Rule 403.

The new Bankruptcy Rules that took effect on August 1, 1983 confirm this distinction. Rule 4003 states that debtors shall list exemptions in a schedule of assets. Rule 1007(b) states that debtors in a chapter 7 liquidation must file a schedule of assets, but the debtors in a chapter 13 proceeding must file a chapter 13 statement. And Rule 1007(c) states that "in a case converted from . . . chapter 13 to chapter 7 . . . a schedule of assets . . . shall be filed by the debtor . . . within 15 days after the entry of the order of conversion." These rules demonstrate the significance of listing exemptions in chapter 7 liquidations. The chapter 13 statement required in Rule 1007(b), Form 10, has the limited role of providing information for the § 1325(a)(4) determination.[8]

8. See footnote 6.

Furthermore, an examination of what constitutes the property of the estate in a converted case leads us to conclude that the date of conversion controls what exemptions may be claimed from that property. The bankruptcy courts are in general agreement that in a case converted from chapter 13 to chapter 7, the property of the estate consists of all property in which the debtor has an interest on the date of conversion. See In re Tracy, 28 B.R. 189 (Bkrtcy.D.Me.1983); In re Stinson, 27 B.R. 18 (Bkrtcy.D.Or. 1982); In re Richardson, 20 B.R. 490 (Bkrtcy.W.D.N.Y.1982). We believe that the same date must control in determining what exemptions the debtor may claim from the estate. Only if the same date controls what is property of the estate and what exemptions may be claimed can the debtor make full use of exemption laws.

If the date of conversion controlled what is property of the estate and, as the trustee in this case argues, the date of the chapter 13 filing controlled what exemptions could be claimed, then the debtor in a converted case would be restricted in his selection of exemptions. He could not exempt any new property acquired after he filed the chapter 13 petition. And he could lose exemptions if he exchanged property after the chapter 13 filing. In this case debtors would be required to claim as exempt property in which they no longer resided. This is contrary to both state and federal statutes. 11 U.S.C. § 522(b)(2)(A); N.D.Cent.Code § 47-18-01 (Supp.1981).

We believe that such results conflict with one of the main goals of the Bankruptcy Code: to provide honest debtors with a fresh start. Debtors are per-

mitted to exempt a certain amount of their personal assets to facilitate a "fresh start." They may make full use of exemptions, and can even convert nonexempt property to exempt property on the eve of bankruptcy. H.R.Rep. 595, 95th Cong., 1st Sess. 361, reprinted in 1978 U.S.Code Cong. & Ad. News 5787, 5963, 6317. Since a chapter 13 case is a purely voluntary procedure which may be abandoned by the debtor at any time (11 U.S.C. § 1307), the conversion of an action from chapter 13 to chapter 7 should not impair the debtor's right to claim exemptions from the property of the estate. In re Richardson, 20 B.R. at 492.

We find further support for our conclusion that the date of conversion controls what exemptions may be claimed

in one of the new bankruptcy rules, Rule 1019(1).[9] The Advisory Note to Rule 1019(1) explains that when the debtor in a converted case has not previously prepared a schedule of assets, he must do so as if a chapter 7 petition had been filed on the date of conversion. Since debtors must claim exempt-

ions in the schedule of assets (Bankruptcy Rule 4003(a)), Rule 1019(1)

9. Rule 1019(1) provides:

> When a . . . chapter 13 case has been converted . . . to a chapter 7 case . . . [l]ists, inventories [and] schedules . . . theretofore filed shall be deemed filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 [i.e., shall file the documents] as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7. (Emphasis added.)

strongly suggests that the date of conversion controls what exemptions may be claimed in a converted case.

Finally, we believe that the equities in this case further support our conclusion that the Lindbergs were entitled to claim a homestead exemption in their farm upon conversion. There is no showing that the Lindbergs' change of residence was fraudulent. While the trustee argues that the debtors should not be allowed to juggle their affairs, the district court here observed that the move and the requested amendment "could be justified because of the change in the Debtors' economic condition due to a decline in the oil business." Westlie Motor Company, the creditor that moved for a conversion and that objected to the Lindbergs' homestead exemption, evidently is attempting to preserve a

deficiency claim on the vehicles the Lindbergs returned. Allowing the Lindbergs to claim an exemption in their farm will not prejudice Westlie or the other creditors. Under the Lindbergs' chapter 13 plan, as confirmed, the creditors had no interest in the farm. They are, therefore, no worse off in the chapter 7 case, so far as the farm is concerned, than they would have been if the conversion had never taken place.

The conversion to chapter 7 was made with the consent of the Lindbergs. Had they failed to give their consent and the chapter 13 proceeding simply was dismissed, at some later date, a new chapter 7 proceeding could have been filed in which an exemption could be claimed on that date. Where there has been the conversion with the consent of the Lindbergs, it would be inequi-

table to reach a contrary result.

Accordingly, we conclude that the district court did not err in allowing the Lindbergs to change their homestead exemption at the time of conversion. We affirm the judgment of the district court.

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SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

Following are two orders of the Honorable Bruce M. Van Sickle, Judge of the United States District Court, District of North Dakota. The first order was filed December 20, 1982. The second order was filed January 13, 1983.

ORDER

On July 7, 1980, the debtors filed for voluntary bankruptcy under Chapter 13, 11 U.S.C. § 1301 et seq. At that time debtors claimed a homestead exemption for a residence in New Town, North Dakota, with a $20,000 equity.

On March 2, 1982, the Bankruptcy Court[1] entered an order converting the

1. The Honorable Harold O. Bullis, United States Bankruptcy Court, District of North Dakota, District of Minnesota, Sixth Division.

the case from Chapter 13 to Chapter 7, which stated that debtors consented to the conversion. Debtors then filed a new set of schedules in which they claimed a homestead exemption for a residence in Stanley, North Dakota, which claimed equity up to $80,000.

The trustee in the case objected to the change in homestead exemption, arguing that the homestead exemption filed at the beginning of the bankruptcy action is binding on the debtor. In support of this proposition, trustee cites 11 U.S.C. § 348(a):

> Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(Emphasis added)

The bankruptcy court rejected this argument, stating as follows:

> While Section 348 of the Bankruptcy Reform Act, 11 U.S.C. § 348, provides that conversion from Chapter 13 to Chapter 7 relates back to the date of the original petition for purposes of the commencement of the case or for the order for relief, since the Debtors are not allowed exemptions under Chapter 13, their claim must necessarily be made at or after the time of conversion.

In re Layne A. Lindberg, et al., No. 80-05270, slip op. at 3 (Bkr. Ct., D. N.D. Aug. 24, 1982).

Apparently, what is behind the court's reasoning is the belief that it is unfair to hold the Debtors to a earlier statement of exemptions made under a Chapter 13 petition, since that statement of exemptions is not required by law as it is in the case of liquidation under Chapter 7. In other words, the court is saying that §348 only relates to filings that were required by law at the time the bankruptcy action

was commenced.

Yet for all practical purposes the law requires that the exemptions be filed at the time of the commencement of the Chapter 13 proceedings, since the bankruptcy court is required under 11 U.S.C. § 1325(a)(4) to determine that unsecured creditors would not receive less under Chapter 13 than they would under Chapter 7. To make this determination the bankruptcy court must ascribe liquidation value to all nonexempt property of the estate. Re Keckler, 3 BR 155, 6 B.C.D. 14 (F. B.C., N.D. Ohio 1980). From this one would conclude that the law by implication requires the statement of exemptions at the time of a Chapter 13 filing.

On this line of reasoning one would conclude that the exemptions given in connection with a Chapter 13 petition are

binding on the debtor when the petition is converted to Chapter 7. This conclusion is supported by several policy considerations.

First, courts do not want to encourage debtors to make statements of exemptions for a Chapter 13 petition that they do not stand behind. Under a rule allowing the change of exemptions in a conversion from Chapter 13 to Chapter 7, the debtor then would have an incentive to convert a proceeding to Chapter 7 just to qualify for a larger homestead exemption. For this reason, the debtor might choose in advance to use a different homestead for purposes of the Chapter 13 and plan to move to another if things don't go as planned, and then convert to Chapter 7.

Second, it is important to have a fixed time at which the assets of the estate are determined so that creditors

may rely on those assets in making future plans. Allowing this change of homestead exemption down the road, throws needless uncertainty into the creditors' future planning.

Third, the debtor, when filing for bankruptcy, is aware that the filing will affect his assets and takes the risk that if he is not able to continue under Chapter 13, he will be forced to liquidate under Chapter 7. He must make his filing in light of the future consequences.

While this court is mindful of the harsh effect its ruling will have on the Lindbergs, it is most appropriate for the reasons stated above, to find that the exemptions are fixed from the time of the initial bankruptcy filing.

The order of the bankruptcy court is reversed and the case is remanded to

the bankruptcy court for proceedings in accordance with this order.

ORDER

Under Rule 812 of the Rules of Bankruptcy Procedure, Title 11 U.S.C., Debtors move this court for a rehearing of its order filed December 20, 1982. In that order, the court reversed the ruling of the bankruptcy judge and ordered the matter remanded with the understanding that the first homestead exemption the debtors had filed was binding on them in their petition for liquidation under Chapter 7 of the Bankruptcy Act. The court reversed the bankruptcy judge in light of 11 U.S.C. § 1325(a)(4), which would protect the creditors, and 11 U.S.C. § 348, which affixes the interests of the parties as of the date of filing.

However, in their motion for a re-

hearing, Debtors argue that the bankruptcy judge could have justified his ruling under Bankruptcy Rule 110, without dealing with the question of statutory interpretation. Bankruptcy Rule 110 provides:

> A voluntary petition, schedule, or statement of affairs may be amended as a matter of course at any time before the case is closed. The court may on application or motion of any party in interest or on its own initiative, order any voluntary petition, schedule, or statement of affairs to be amended. Every amendment under this rule shall be filed in the same number as required of the original papers and the court shall give notice of the amendment to such persons as it may designate.

This court did not address this argument in its order of December 20, and thus shall do so now.

This court finds Debtors' argument convincing. Debtors' filing of new schedules can reasonably be construed as an application for amendment. The changing of the homestead exemption can properly be considered to be an amendment

of a "petition, schedule, or state of affairs."[1] And the bankruptcy judge gave all interested parties notice of these changes.

Further, the bankruptcy judge did not abuse his discretion in granting the amendment. The conversion to Chapter 7 was itself initiated by the request of creditors; the judge gave the creditors an opportunity to make their objections heard; and the amendment could be justified because of the change in the Debtor's economic condition, due to a decline in the oil business.

The Debtors' petition for rehearing is granted.

For the above reasons, the court

1. The Advisory Committee's Note indicates that amendment might be used to claim additional exempt property. 11 U.S.C. Bankr. R. 110.

reverses itself, confirms the order of the bankruptcy court, and dismisses the appeal.

United States Court of Appeals

For the Eighth Circuit

83-1310-ND September Term, 1983

In re: Layne A. Lindberg, Et al.,	)
	)
Debtors.	)
	)
Phillip D. Armstrong, Etc.,	)
	)
Appellant,	)
	)
Layne A. Lindberg, Et al.,	)
	)
Appellees.	)

Appeal from the United States
District Court for the
District of North Dakota

The Court, having considered appellant's petition for rehearing en banc and being now fully advised in the premises, is hereby denied.

July 12, 1984

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